

SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL)

INTERACTIVE SESSION –EFFECTIVE
FUNCTIONING OF ICC – 17-02-17.

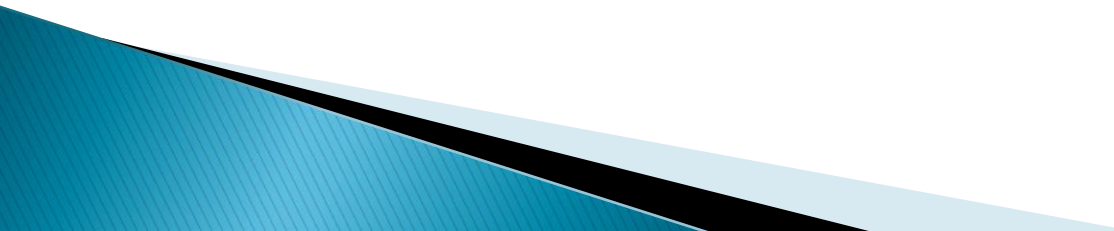
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The contents of the power point presentation do not construe to be any legal advise either of the Speaker or of the Chamber.

OBJECTS OF THE ACT

- No women shall be subject to sexual harassment at any Work Place.
- Prevention and redressal of complaints of sexual harassment.
- Shifting accountability from individual to Institutions.
- 3 key obligation on the employer- PROHIBITION, PREVENTION AND REDRESS

Employer

- (i) Govt. Organisation - head of that department, organisation, undertaking, establishment, enterprise, institution
 - (ii) Private Organizations – any person responsible for the management, supervision and control of the workplace
 - (iii) dwelling place or house - a person or a household who employs or benefits from the employment of domestic worker
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Aggrieved Women

- Workplace - a woman, of any age whether employed or not who alleges to have been subjected to any act of SH by the Respondent
- Dwelling place - a woman of any age who is employed in such a dwelling place or house

Aggrieved women



Working

Visiting a
workplace

Student



*Domestic
Worker*

Regular/Temp
Adhoc/Daily
wage

For
Remuneration/voluntary/otherwise

Employed
directly/through
an agent

Contract
Worker/Probationer/
trainee/apprentice/
called by any such
name

DEFINITION OF SEXUAL HARASSMENT

Similar to the definition given by the Supreme Court in the Vishaka's Case Judgment on 13 August 1997. "includes any one or more of the following **unwelcome acts or behavior** (whether directly or by implication) namely:--

- (i) physical contact and **advances**; or
- (ii) a demand or request for sexual favors; or
- (iii) making sexually colored remarks ; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non verbal conduct of sexual nature.

WHAT CONSTITUTES SEXUAL HARASSMENT

FORMS OF SEXUAL HARASSMENT

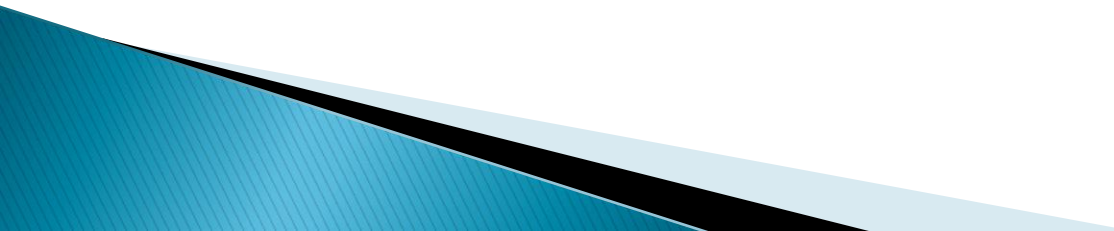
Generally workplace sexual harassment refers to two common forms of inappropriate behaviour:

- **Quid Pro Quo (literally 'this for that')**
 - (i) implied or explicit promise of preferential treatment in her employment; or
 - (ii) implied or explicit threat of detrimental treatment in her employment; or
 - (iii) implied or explicit threat about her present or future employment status; or

WHAT CONSTITUTES SEXUAL HARASSMENT

FORMS OF SEXUAL HARASSMENT

Hostile Work Environment

- (iv) interferes with her work or creating an intimidating or offensive or hostile work environment for her; or
 - (v) humiliating treatment likely to affect her health or safety
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PENALTY FOR NON-COMPLIANCE BY EMPLOYER

First Conviction- punishable with fine which may extend to fifty thousand rupees.

For subsequent conviction of same offence

- i) twice the punishment, which might have been imposed on first conviction and
- ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration,, by the Government or local authority, required for carrying on his business or activity.

As an employer know the following:

- First and foremost, acknowledge that it is your legal responsibility to provide safe working environment for women free from sexual harassment and discrimination and that you can be held liable for sexual harassment by employees.
 - Know that sexual harassment can have a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work, or leaving their job to seek work elsewhere.
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As an employer know the following:

Recognise the tangible and intangible expenses and losses to the Company:

- Costly investigation and litigation
 - Negative exposure and publicity
 - Embarrassing depositions
 - Increased absenteeism
 - Lowered employee morale
 - Reduced productivity
 - Decreased efficiency
 - Higher employee turnover
 - Erosion of organisation's brand names, goodwill & public image
 - Negative impact on stock price.
- The best way to prevent sexual harassment is to adopt a comprehensive sexual harassment policy. The aim is to ensure that sexual harassment does not occur and, where it does occur, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence.

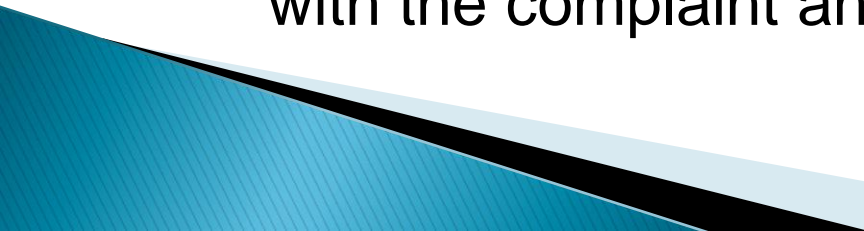
DUTIES OF EMPLOYER (HR)

- Provide a safe working environment for women at work place, which shall include safety from the persons coming in to contact at the work place.
- Display at any conspicuous place at the work place, the penal consequences of Sexual Harassment and the order constituting the ICC for prevention of Sexual Harassment
- Formulate, communicate and enforce the policy.
- Issue a strong message from the top authority against sexual harassment taking a "zero tolerance" approach.
- Insist all the employees to read and understand the policy.

DUTIES OF EMPLOYER (HR)

- Ensure that third-party such as suppliers and customers are aware of your sexual harassment policy. Review the policy with your employees on a regular basis
- Enforce Policy : Take complaints of sexual harassment seriously and investigate all sexual harassment charges quickly, thoroughly and professionally.
- Safeguard your employees from third-party work-related sexual harassment.
- A casual remark or things – do not ignore. Informally make enquiry.
- Whenever the allegation is made court will look in to the allegation from the point of view of the women, what she feels or thinks and not what man thinks.

DUTIES OF EMPLOYER (HR)

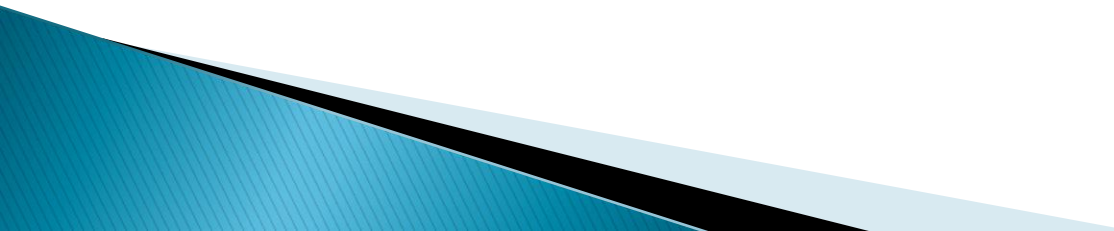
- Encourage HOD's to have open discussion with the employees.
 - At the time of induction or monthly meeting discuss and with the employee about the Company's policy.
 - Maintain accurate records of the investigation and the findings.
 - Make sure employees who bring charges do not face retaliation
 - Provide necessary facilities to the ICC for dealing with the complaint and conducting and inquiry.
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DUTIES OF EMPLOYER (HR)

Organize workshops and awareness programs at regular intervals for apprising the employees with provisions of the Act, policy and orientation programs for the members of the ICC.

Awareness program and orientation program are very important. The employees have to be made aware that they need to adjust, adopt and accept the behaviour at workplace as the employees come from various back grounds, culture, society and school.

DUTIES OF EMPLOYER (HR)

- Immediately forward the complaint to ICC in case if you receive.
 - Assist in securing attendance of respondent and witnesses before ICC.
 - Ensure that the complaint is signed by the Complainant.
 - Make available such information to the ICC, as it may require having regard to the complaint.
 - Provide assistance to the woman, if she chooses to file a complaint in relation to the offence under the IPC or any other law for the time being in force.
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DUTIES OF EMPLOYER (HR)

- Cause to initiate action under the IPC or any other law for the time being in force, against the perpetrator or if the aggrieved woman so desires where the perpetrator is not an employee at the workplace at which the incident of sexual harassment took place.
- Set up as a sensing mechanism and conduct surveys time to time to identify and prevent factors/situation leading to incidence of Sexual Harassment.
- Treat Sexual Harassment as a Misconduct under the service rules and initiate action for such misconduct
- Monitor the timely submission of reports by the Internal Committee

Preventive Steps

All employers or persons in charge of work place should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps.

a. Express prohibition of sexual harassment as defined above at the workplace should be **notified, published and circulated in appropriate ways.**

b. Company should take steps to include the aforesaid prohibitions in their Standing Orders/ Service Hand Book/Company Rule Book.

c. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Disciplinary action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

PURPOSE OF CONSTITUTING A COMMITTEE

It is intended to serve two purpose:

- (i) To redress the grievances of women employees
- (ii) To send a clear signal to all the employees that complaints of sexual assaults would be viewed seriously by the company and will be enquired in to by a Committee especially constituted for the purpose, with the participation of outsider.

In other words it is to serve both as preventive and punitive and also to avoid series of expensive litigation including civil and criminal.

Internal Complaints Committee

- Presiding Officer, to be headed by a Woman, employed at a Senior level at Work Place from amongst the employees
- Two Representatives from employees committed to the cause of women or have experience in social work or having legal knowledge
- One member amongst NGO or Associations committed to the cause of women, or a person familiar with the issues relating to sexual harassment.
- At least one half of the total members so nominated shall be women.

Advisable to have odd number of members in the Committee

Person familiar with issues relating to SH

A person who has expertise on issues relating to SH and may include following:

- A social worker having at least five years experience in the field of social work particularly working toward the empowerment of women.
- A person familiar with labour, service, civil or criminal law.

REMOVAL AND FILLING UP OF VACANCY

- i. Contravenes the provision of section 16 (fails to maintain confidentiality)
- ii. Convicted for an offences or an inquiry in to an offence under any law for time being in force is pending against the member.
- iii. Found guilty in any disciplinary proceeding or disciplinary proceeding is pending against such member.
- iv. Abused his position as to render his continuation in office is prejudicial to the public interest.

Such member or presiding office shall be remove and position may be filled by fresh nomination as per section 4.

Term of the Internal Complaints Committee

3 years from the date of their nomination as specified by the employer

Internal Complaints Committee

For conducting enquiry, a minimum of three members of the ICC including presiding officer or the chairperson is required.

Conflict of interest: If the complaint is filed against one of the committee member or such member is likely to be a witness in proceeding, he shall not be part the ICC.

“Nemo judes in cause sua” i.e. no man can be the judge of his own case. To illustrate, the Inquiry Officer should not be a complainant or a witness of the alleged misconduct.

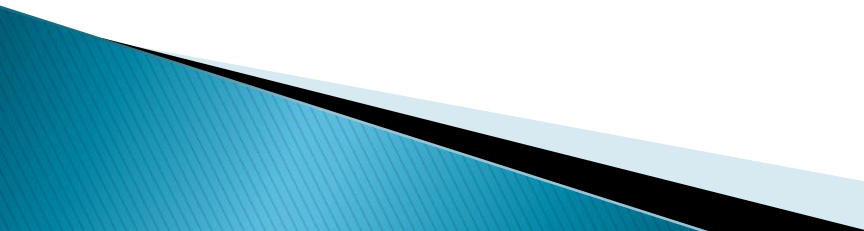
Who can file a Complaint

Any aggrieved woman

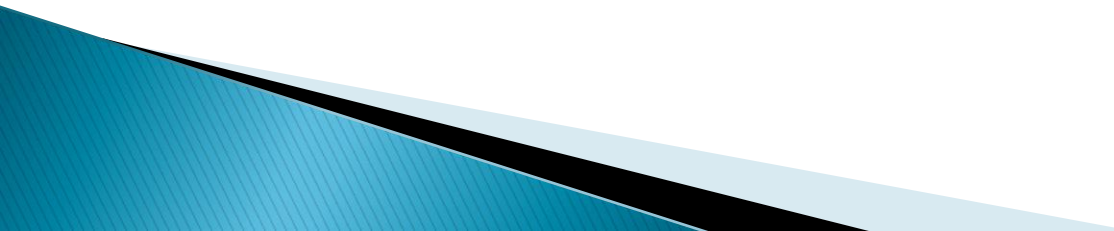
Within 3 months from the date of incident and in case of series of incidents, within a period of three months from the date of last incident

PROCEDURE FOR ENQUIRING INTO THE COMPLAINT

CONCILIATION

- The ICC may , before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.
 - No monetary settlement in conciliation.
 - If settlement is arrived in Conciliation, the Internal Committee shall record the settlement and forward the same to the employer to take action as specified in the recommendation.
 - Copies of settlement to be provided to aggrieved woman and respondent.
 - No further inquiry needs to be conducted.
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Procedure for complaint

- the complainant shall submit to ICC, six copies of the complaint along with supporting documents, names and addresses of the witnesses
 - The ICC shall send one copy of the complaint, to the respondent, within a period of seven working days
 - The respondent shall file his reply to the complaint along with his list of documents, names and addresses of witnesses, within ten working days from the date of receipt of the copy of complaint
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INQUIRY INTO COMPLAINT

- The Internal Committee shall, make inquiry into the complaint. Examine the incident reported and form a prima facie opinion as to whether it amounts to misconduct – sort of a preliminary inquiry.
- ICC shall decide the date, time and venue of the enquiry and Intimate the Complainant, Respondent and witnesses about the same.
- Record the minutes of the meeting and ensure that all the concerned have signed the minutes.
- Inquiry Committee is vested with the powers of Civil Court under CPC to enforce the attendance of the witnesses.
- The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice
- Enquiry shall be completed within a period of 90 days

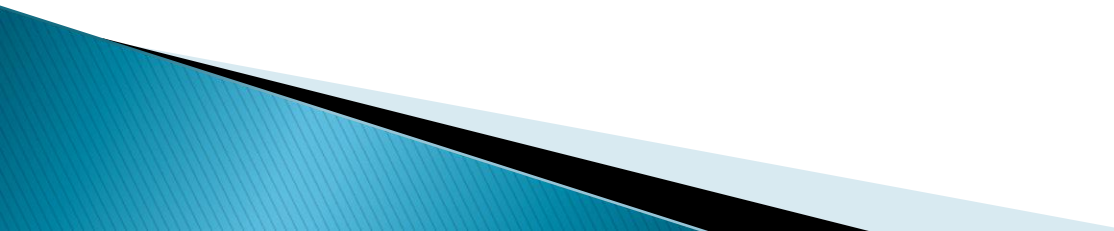
Procedure of enquiry into the complaint

The ICC shall have the right to terminate the inquiry proceedings or to give an ex parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson. Termination of inquiry or ex-parte Order may not be passed without giving a notice in writing, 15 days in advance to the party concerned.

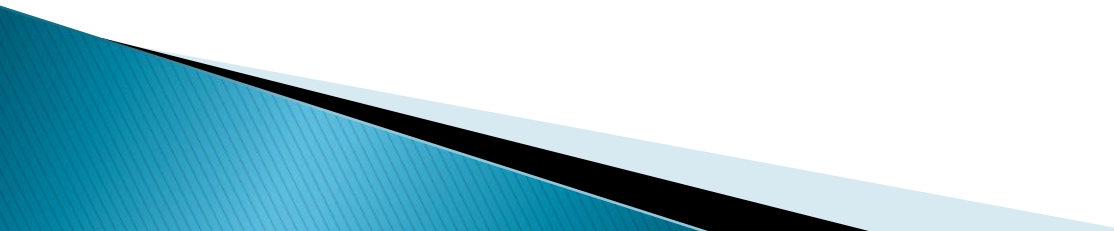
The Parties shall not be allowed to bring in any legal practitioner to represent them in the case at any stage of the proceedings before the ICC

Quorum - minimum of three Members of the Complaints Committee including the Chairperson, shall be present

INQUIRY REPORT

- On completion of an inquiry, the Internal Committee shall provide a report of its findings to the employer, within a period of ten days from the date of completion of the inquiry
 - report to be made available to the concerned parties
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Findings

- NOT GUILTY – Recommend no action against the Accused
 - MALICIOUS COMPLAINT - Recommend Action against aggrieved employee
 - GUILTY – Recommend punishment as per Service Rules
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INQUIRY REPORT - RECOMMENDATIONS

If the allegations are proved, ICC to recommend to the employer:

1. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules
2. to deduct, from the salary/wages, of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs

Determination of Compensation

For the purpose of determining the sums to be paid to the aggrieved woman, the ICC shall take in to consideration :

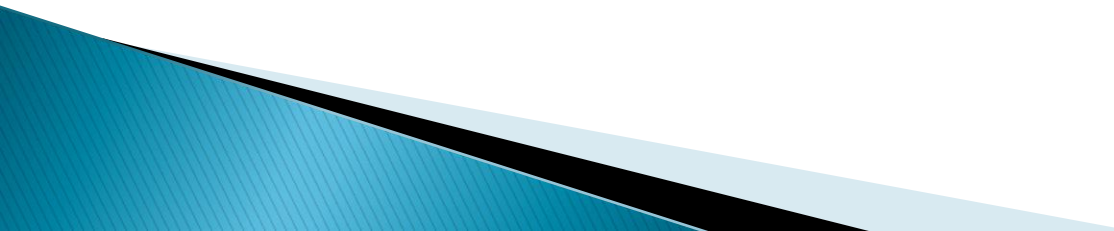
- a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
- b) the loss in the career opportunity due to the incident of sexual harassment
- C) medical expenses incurred by the victim or physical or psychiatric treatment
- d) the income and financial status of the respondent
- e) feasibility of such payment in lump sum or in installments

ROLE AND RESPONSIBILITIES OF THE ICC

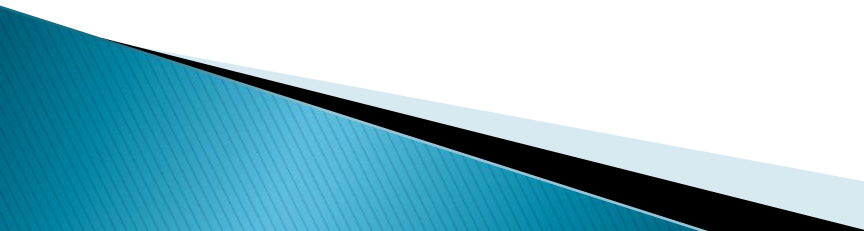
A fair, prompt and impartial enquiry starts with ICC creating an environment of trust and confidence through out the process of enquiry.

- Evaluate the complaint - Three types of Complaints
 - Real Complaints
 - Misunderstood complaints*
 - Motivated or intentional complaint*
- Before initiating conciliation Assess the severity of the situation and if necessary advise and enable the complainant to opt for continuation of the complaint.

ROLE AND RESPONSIBILITIES OF THE ICC

- During the enquiry assure confidentiality, non-retaliation and recommend interim measure as needed to conduct fair enquiry
 - Review the Complaint –
 - Whether the complaint is file within 3 month from the date of alleged incident? If No – any explanation for the delay.
 - Whether the incident alleged is related to or have connection to the workplace
 - Whether the behaviour complained of is fitting in to the definition of SH.
 - Whether such behaviour is directed at the complainant.
 - Any additional information needed from the Complainant.
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ROLE AND RESPONSIBILITIES OF THE ICC

- ICC cannot function like a criminal court. All sexual crimes are committed in private. There may not be any eyewitnesses. The Committee is required to analyse the case on the principle of preponderance of probabilities.
 - It is difficult for a woman to talk about anything sexual. Hence there can be long time interval between the harassment and the actual complaint.
 - handle complaints in a confidential manner and within a time-bound framework
 - Understand that there are two types of case. One is misunderstood cases and intentional/motivated cases. Misunderstood cases can be sorted out by talking to them.
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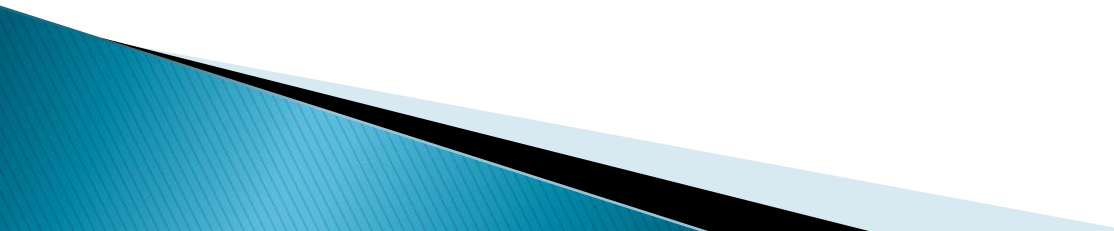
ROLE AND RESPONSIBILITIES OF THE ICC

- Be thoroughly prepared.
- Be unbiased and through professional.
- Know the Act, Policy and/or relevant Service Rules
- Gather and record all relevant information
- Determine the main issues in the complaint
- Prepare relevant interview questions
- Conduct necessary interviews
- Ensure parties are made aware of the process and rights/responsibilities within it
- Analyze information gathered
- Prepare the report with findings/recommendations

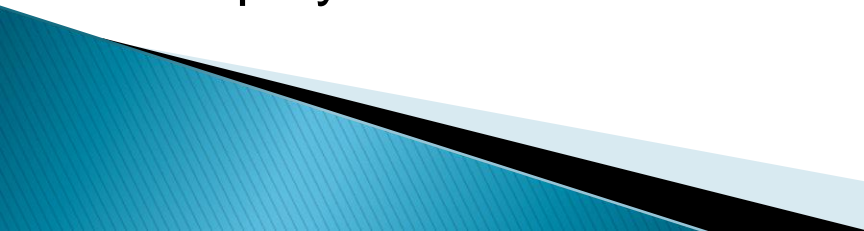
ROLE AND RESPONSIBILITIES OF THE ICC

- ICC should be competent at showing empathy, being impartial and being thorough.
- Don't have pre-determined notions of how a victim or accused should look or behave.
- Do not allow your personal knowledge about the complainant or the Respondent play a roll in the proceeding.
- Encourage the woman to note details of each incident of harassment and monitor any changes in work patterns or attitude on the part of alleged harasser so as to avoid, as far as possible, attempts at victimisation or accusations of poor performance etc.
- Make discreet enquiries as to whether other employees have experienced similar problems. If yes, ask them details of any harassment, which occurred.

ROLE AND RESPONSIBILITIES OF THE ICC

- Always document the result of S H complaint and investigation. Document the corrective action suggested to the employer. Follow up on the corrective actions suggested.
 - The choice of a formal process rests with the complainant even if the ICC believes that this can be resolved through an informal process.
 - Record the minutes of the meeting and take signature of all the concerned.
 - Maintain clear, timely communication with the parties throughout the process.
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ROLE AND RESPONSIBILITIES OF THE ICC

- Identify the substance of each aspect of the complaint and determine, whether or not, on a balance of probability, the unwelcome sexual harassment took place and whether such behavior/conduct falls within the definition of sexual harassment set out in the Act/policy.
 - Do not get aggressive under any circumstances.
 - Do not give too much weightage to intension, focus on the impact, and proof beyond reasonable doubt is not required, a strong probability is sufficient.
 - Prepare and submit Annual Return to the Authority and the employer.
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POWER OF THE ICC

ICC has the powers as are vested in civil court under the Code of Civil Procedure, 1908 when trying a complaint, namely:

- a. Summoning and enforcing the attendance of any person and examining him on oath;
- b. Requiring the discovery and production of documents; and
- c. Any other matter which may be prescribed.

Even Arbitrator under the Arbitration Act does not have this power.

Case studies

QUESTIONS



TEAMLEGIST

THANK
YOU

